

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Bhanwarlal & Anr. v. Gram Panchayat, Nandeshma
and others.

S.B.CIVIL WRIT PETITION NO.5753/1993
under Article 226 of the
Constitution of India.

Date of Order : 14th February, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioners.
Mr. S.N.Tiwari, Dy.Govt.Advocate.
Mr. Rajat Dave, for the respondents.

BY THE COURT :

By this writ petition a challenge is given by the petitioners to the order passed by Gram Panchayat Nandeshma dated 17.10.1982, the order passed by Panchayat Samiti Gogunda dated 20.4.1989 and the order passed by Additional Collector, Udaipur dated 30.7.1993.

Gram Panchayat Nandeshma by order dated 17.10.1982 held that "Bawri" (stepped well) in dispute with adjacent land measuring 3 biswas is a property of Gram Panchayat and, therefore, directed the petitioners to hand over possession of "Bawri" and the land adjacent thereto to Gram Panchayat within a period of 15 days. Gram Panchayat also imposed a penalty of Rs.15/-upon

the petitioners for having unauthorised possession over the "Bawri" and the land adjacent thereto. Panchayat Samiti Gogunda by its order dated 20.4.1989 affirmed the order passed by appellate authority exercising appellate jurisdiction and the court of Additional Collector, Udaipur by order dated 30.7.1993 affirmed the orders passed by Gram Panchayat Nandeshma as well as by Panchayat Samiti Gogunda exercising revisional powers vested with it.

Facts necessary for adjudication of the present writ petition are as follows:-

An application was preferred by Jain Mahajan Samaj Nandeshma before Gram Panchayat Nandeshma claiming title over the "Bawri" in dispute with adjacent land thereto alleging encroachment of the petitioners thereon. The petitioners after receiving a notice from Gram Panchayat Nandeshma submitted a reply to the application stating therein that "Bawri" and the land in question was entered as khatedari land of one Shri Udairam in samvat 1932. Aforesaid Shri Udairam sold this "Bawri" and the land to father of the petitioners in the year 1932 corresponding to samvat 1989. The petitioners in view of it claimed title over the "Bawri" and the land adjacent thereto. The Gram Panchayat after hearing parties by its order dated 17.10.1982 held that "Bawri" and the land adjacent thereto are public property and, therefore, are property

of the Gram Panchayat. The Gram Panchayat by order dated 17.10.1982 directed the petitioners to hand over possession of "Bawri" and the land adjacent thereto within a period of 15 days. A declaration was also made that "Bawri" and the land adjacent thereto and a piao constructed thereon are of public use and, therefore, are property of Gram Panchayat Nandeshma. The Gram Panchayat by order impugned dated 17.10.1982 also imposed a penalty of Rs.15/- upon the petitioners for making encroachment on public property.

The petitioners being aggrieved by the order passed by Gram Panchayat preferred an appeal before the Panchayat Samiti Gogunda which was decided by an order dated 20.4.1989. The Panchayat Samiti maintained the order passed by Gram Panchayat.

The petitioners being aggrieved by the orders passed by Gram Panchayat as well as Panchayat Samiti preferred a revision petition before Additional Collector, Udaipur. The Additional Collector, Udaipur by order dated 30.7.1993 dismissed the revision petition holding that in light of provisions of Section 88 of the Rajasthan Panchayat Act, 1959 (hereinafter referred to as "the Act of 1959") the "Bawri" in dispute with land adjacent thereto and the piao constructed thereon is a panchayat property.

Being aggrieved by the orders referred above, the present writ petition is preferred.

I have heard counsel for the parties.

The contention of counsel for the petitioners is that Gram Panchayat was having no jurisdiction to decide title of property and further to direct the petitioners to hand over possession of the property in question. It is further stated by counsel for the petitioners that under Section 88 of the Act of 1959 public wells are certainly property of a Gram Panchayat but wherever and whenever a title is claimed over a well which is admittedly in possession of a private property cannot be treated as a public well and, therefore, it cannot be treated as a property of panchayat. According to the counsel for petitioners the Gram Panchayat is having no jurisdiction to decide the question of title and to direct the petitioners to leave possession of the property in question. He has substantiated his contention by law laid down by this Court in the case of Poona v. Tehsil Panchayat, Desuri, reported in 1960 RLW 475. In the aforesaid case learned Single Judge of this Court held as under:-

“6. The contention raised by learned counsel for the respondent has no force. What Poona wanted from the Gram Panchayat was Patta sale deed of the plot of land under the house, by the Gram Panchayat under r.37A (18). This clause is as follows:-

where any person appears to have been in possession either by himself, or through his predecessors in title for 40 years or more consecutively, though he has no sale deed in his favour the Panchayat may execute a sale deed in his favour of the land for an amount equal to 6 ¼% of the normal value of the land. Such sale deed shall not be regarded as affecting the right of any other persons in or to or over the land.

The Gram Panchayat agreed to grant the Patta, that is to execute the sale deed according to this rule. On appeal by the objectors, the Tehsil Panchayat was acting within its jurisdiction when it decided that the patta should not be granted. Whether there were good reasons for coming to that reason or not need not be discussed. The Tehsil Panchayat however had no jurisdiction to direct that Poona should hand over possession of the house to Lakhma, Shivilal and Kesa and that the Gram Panchayat should enforce compliance of this order. The Gram Panchayats or the Tehsil Panchayats have no jurisdiction to decide questions of title much less to grant a decree or to pass an order that one party should handover possession of a disputed property to another party. That part of the order of the Tehsil Panchayat was wholly without jurisdiction.

7. Under the administrative powers of the Panchayat, it has power to impose fine in case of disobedience of any order under sec.27 and the fine can be recovered by the Sub-Divisional Magistrate under sec.34. There does not appear to be any provision in the Rajasthan Panchayat Act which may authorise a Sub-Divisional Magistrate to enforce any order of the Gram Panchayat or Tehsil Panchayat or to have it enforced through the police. There is no reference in the order of the Sub-Divisional Officer to any law under which he may have purported to act when he directed the Station House Officer, Bali to dispossess Poona and to direct that the possession of the house be delivered to Lakhma, Shivilal and Kesa. The disputes regarding immovable property are not within the jurisdiction of the Panchayats and have to be dealt with by the civil courts established by the State, where the presiding officers, trained in law

adjudicate on the claims of the parties. Under sec.49 of the Rajasthan Panchayat Act it has been provided that the Code of Civil Procedure, the Court fee Act, the Indian Evidence Act and the Indian Limitation Act shall not apply to the proceedings before the Panchayats save to the extent provided in the Act. The civil powers of the Gram Panchayat are within narrow limits and stated under section 39 of the Act. It could have been easily found by the Sub-Divisional Officer if he had cared to read the provisions of the Rajasthan Panchayat Act that the order of the Tehsil Panchayat was without jurisdiction and that he himself had no power to execute the same. It is a matter of regret that the Executive Officer concerned, Mr. Gopal Das Kuvalia, R.A.S., did not take the trouble to find out his own powers or the powers of the Tehsil Panchayat whose orders he wanted to have executed."

Counsel appearing on behalf of State failed to satisfy me with regard to powers of the Gram Panchayat to adjudicate the questions with regard to title of a immovable property. In the present case the petitioners as well as Samast Jain Mahajan Samaj claimed title over the property in dispute. The Gram Panchayat adjudicated the questions pertaining to the tile and held that the property is of public use and, therefore, its title vests with Gram Panchayat.

In my considered opinion the Gram Panchayat acted beyond the jurisdiction vested with it. A public well is certainly a property of Gram Panchayat but wherever and whenever a dispute with regard to title of a well is raised then such dispute can be decided only by civil court and not by Gram Panchayat. The law laid

down by this Court in the case of Poona (supra) is quite clear in this regard. The appellate court as well as the revisional court also failed to appreciate that the Gram Panchayat was lacking jurisdiction to adjudicate the question with regard to title of the property in question. These orders are, therefore, perverse.

In view of it the writ petition succeeds. The order passed by Gram Panchayat Nandeshma dated 17.10.1982, the order passed by Panchayat Samiti Gogunda dated 20.4.1989 and the order passed by Additional Collector, Udaipur dated 30.7.1993 are hereby quashed. It is open for the Gram Panchayat as well as for Jain Mahajan Samaj to get the question with regard to title decided by the competent civil court, if they choose to do so.

No order as to costs.

(GOVIND MATHUR), J.

kkm/ps.